

A1

APPENDIX

APPENDIX A

SEPTEMBER TERM—October 6, 1982

**Before Honorable James E. Barrett, Honorable Delmas C.
Hill and Honorable Monroe G. McKay, Circuit Judges,
United States Court of Appeals**

No. 81-1410

**RICHARD J. ROME,
Plaintiff-Appellant,**

v.

**THE SUPREME COURT OF KANSAS,
Defendant-Appellee.**

This matter comes on for consideration of appellant's petition for rehearing which we construe as a motion to recall the mandate. On consideration whereof, we conclude that appellant has failed to raise any argument not previously considered by this court. Accordingly, appellant's petition for rehearing is denied.

/s/ Howard K. Phillips
Howard K. Phillips, Clerk

APPENDIX B

(Filed August 19, 1982)

**NOT FOR ROUTINE PUBLICATION
UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**

No. 81-1410

RICHARD J. ROME,
Plaintiff-Appellant,

v.

THE SUPREME COURT OF KANSAS,
Defendant-Appellee.

Appeal from the United States District Court
For the District of Kansas
(D. C. No. 81-1084)

Submitted on the briefs pursuant to Tenth Circuit Rule 9:

Richard J. Rome, pro se.

Robert T. Stephan, Attorney General, and Bruce E. Miller,
Deputy Attorney General, the State of Kansas, Topeka,
Kansas, for Defendant-Appellee.

Before BARRETT, HILL and McKAY, Circuit Judges.

PER CURRIAM.

This three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed.R.App.P. 34(a);

Tenth Circuit R. 10(e). The cause is therefore ordered submitted without oral argument.

Plaintiff appeals the order of the district court dismissing his request for temporary injunctive relief pending review by the United States Supreme Court. Defendant has filed a motion to dismiss the appeal as moot.

On February 10, 1981, the Supreme Court of Kansas entered an order removing Plaintiff from his position as Associate District Court Judge for violations of the Code of Judicial Conduct. Plaintiff's motion for rehearing was denied by the Supreme Court of Kansas. Plaintiff then brought this action in federal district court to enjoin removal and appointment of a successor pending disposition of his petition for writ of certiorari to the United States Supreme Court from the decision of the Kansas Supreme Court. On March 23, 1981, the district court dismissed the complaint sua sponte holding that it was improper for a federal court to intervene in state court disciplinary matters. Plaintiff appealed.

Subsequent to the filing of this appeal, the United States Supreme Court denied plaintiff's petitions for writ of certiorari and for rehearing. Defendant filed a motion to dismiss the appeal as moot pursuant to Tenth Circuit R. 9 in view of the Supreme Court's rulings.

Generally an appeal will be dismissed as moot when events occur during the pendency of the appeal which prevent the appellate court from granting the requested relief. *In re Cantwell*, 639 F.2d 1050, 1053 (3d Cir. 1981); *In re Combined Metals Reduction Co.*, 557 F.2d 179, 187 (9th Cir. 1977); *Alton & Southern Railway Co. v. International Association of Machinists & Aerospace Workers*, 463 F.2d 872, 877-78 (D.C. Cir. 1972). In his complaint, plaintiff sought only a temporary injunction against en-

forcement of the Kansas Supreme Court's order of removal pending a decision on his petition for writ of certiorari by the United States Supreme Court. The decisions of the United States Supreme Court denying certiorari and rehearing clearly render this appeal moot, since there is no longer any basis for granting the requested temporary injunctive relief. We reject plaintiff's argument that the request for attorneys' fees contained in his complaint prevents this appeal from being moot. Since plaintiff is not a prevailing party within the meaning of 42 U.S.C. § 1988, he is not entitled to attorneys' fees. Furthermore, we reject plaintiff's characterization of his residuary prayer for "any further monetary . . . relief as may seem just and equitable" as a prayer for damages which would prevent this appeal from being moot. Accordingly, defendant's motion to dismiss this appeal is granted.

APPEAL DISMISSED.

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF KANSAS**

Civil Action No. 81-1084

RICHARD J. ROME,
Plaintiff,

vs.

THE SUPREME COURT OF KANSAS,
Defendant.

ORDER OF DISMISSAL WITH PREJUDICE

(Filed March 23, 1981)

On March 5, 1981, the plaintiff, Richard J. Rome, filed herein a voluminous, rambling and self-serving complaint against the Supreme Court of the State of Kansas, wherein he seeks to enjoin said court from enforcing an order entered by it on February 10, 1981, in a case styled State v. Rome, 52,241. The order sought to be stayed or enjoined directed that the plaintiff Rome be "forthwith" removed from his position as Associate District Court Judge of the Twenty-Seventh Judicial District of the State of Kansas, Position I, Hutchinson, Kansas. Said order of the Supreme Court of the State of Kansas, it is alleged, upheld and ratified a recommendation entered by a duly constituted commission which was properly empaneled and acting pursuant to the judicial disciplinary powers conferred upon it by the Constitution of the State of Kansas. Plaintiff alleges that his constitutional rights have been violated and that he seeks and is in the process of preparing

a petition for writ of certiorari to the Supreme Court of the United States, but desires that the order of the Supreme Court of the State of Kansas be stayed pending the efforts of plaintiff to obtain a review of same by the highest court in the United States.

The Chief Judge of the Court of Appeals for the Tenth Circuit has assigned me to hold court in the State of Kansas for the purpose of hearing this matter, and the Clerk of the United States District Court for the District of Kansas in Wichita has forwarded me a copy of the complaint, which has been studied in detail. Now, being advised in the premises, the court does hereby, sua sponte, order the complaint herein and all causes of action therein attempted to be stated dismissed.

It is elementary that one court should not intervene into the actions of another court excepting in those rare instances where supervisory control is specifically mandated by law. Certainly, in the area of state-federal judicial relations the intrusion of one court into the proper functions of the other is intolerable, and this is especially so with respect to judicial disciplinary proceedings. In holding that a federal court should abstain from intervening in a state court disciplinary matter, Judge Joiner said:

Surely, it appears to this Court, an . . . important and core interest of a state's judicial system is the procedure and mechanism it has adopted for policing and enforcing standards of judicial conduct of its judges. This Court can think of no more sensitive and important interest of the state's judicial system than that of assuring the integrity of the state bench. Therefore, this is clearly the type of case where this Court should exercise equitable restraint and require

the plaintiff to pursue his remedies in the state courts. (*Del Rio v. Kavanagh*, 441 F.Supp. 220.)

If it be urged that the doctrine of abstention is inapplicable here since the state court has completed its hearings, I simply say that the issuing of a stay of the final judgment of the Kansas Supreme Court is at least as significant an intrusion into state matters as would be the enjoining of the prosecution of disciplinary proceedings prior to judgment.

The Court of Appeals for the Sixth Circuit has spoken directly to the question presented here, and in *O'Neill v. Battisti*, 472 F.2d 789, cert. denied, 411 U.S. 964, held that the United States District Court for the District of Ohio should not interfere in any way with disciplinary proceedings in the Supreme Court of the State of Ohio, which disciplinary proceedings were instituted to remove a judge from presiding over the Court of Common Pleas of Hamilton County. Therein the court quoted from the body of the opinion in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, as follows:

Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy. The explicit wording of § 2283 itself implies as much, and the fundamental principle of a dual system of courts leads inevitably to that conclusion.

If the plaintiff has been unlawfully deprived of his civil rights and if the challenged order should properly be stayed such relief must come from either the Supreme Court of Kansas or of the United States. It would be inexcusable meddling for this district court to enter into the controversy.

A8

For all of the foregoing reasons, the complaint herein and cause of action therein stated are hereby dismissed with prejudice.

The Clerk of the Court is directed to mail a copy hereof to plaintiff's counsel and to the Clerk of the Supreme Court of the State of Kansas.

DATED this 20th day of March, 1981.

/s/ Luther B. Eubanks
United States District Judge